IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 634 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

VINODSING MOHANSING - Appellant(s)

Versus

STATE OF GUJARAT - Opponent(s)

==========

Appearance :

MR PK SHUKLA for Appellant

MR SP HASURKER APP for Respondent

==========

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date : 04/08/2005

ORAL JUDGMENT

1 This appeal is preferred by the appellant under Section 374(2) of the Code of Criminal Procedure against the judgment and order delivered by Special Judge,

Jamnagar, on 19th of February, 2003, in Criminal Case No. 7 of 1999, convicting the present appellant for the offence punishable under Section 20(b)(ii)(B) of the Narcotic Drugs & Psychotropic Substances Act, 1985, and the appellant was sentenced to undergo rigorous imprisonment of 7 years and to pay fine of Rs. 50,000/- in default to undergo rigorous imprisonment of one year. The accused No.2 of said criminal case being juvenile, he was sent to Juvenile Court. One more accused was shown absconding. The present appellant was accused No.1 and came to be convicted and sentenced as above.

2 Brief facts of the case indicate that on 20th of August, 1999, Police Inspector of `A' Division Police Station, Jamnagar City, received information that the present appellant had brought some supply of narcotic substance, and in station diary at 13.45 hours at Sl. No. 16 of 1999 entry was made in this respect by P.I. Zala. District Superintendent of Police, Jamnagar, was immediately informed and two panchas were called for at the Police Station. In pursuance of Section 42(1) of the NDPS Act, necessary orders were passed. Police staff of raiding party and panchas Keshavji Mohan and Nagabhai Alabhai Makwana searched each other and after

preliminary panchanama at 14.50 hours and after making entries in station diary, a raid was conducted near Shankar tekri New Jail Road at the house of the present appellant. Present appellant was staying as tenant of one Malde Desur Aher. In the said house, raid was conducted at about 15.00 hours, and in the said raid, from the possession of the present appellant and accused No.2 Sujitsing, in all, 885 grams of charas was found from separate places of the house. As indicated in the panchnama, the said charas was weighed by an independent witness called by the police and was seized according to law and was sealed in separate plastic bags. One sample was sent to Forensic Science Laboratory. The appellant was arrested on the same day and a complaint by P.I. Zala was lodged at `A' Division Police Station, Jamnagar City at 18.00 hours. The investigation was entrusted to Rambhai Kuberbhai Prajapati, the then PSI of Jamnagar City `A' Division Police Station and examined as PW-15. A charge came to be framed against both the accused vide Exh.5 on 20th of September, 2000 and on their denying the charge, the prosecution tendered oral as well as documentary evidence to prove its case. The prosecution examined in all 15 witnesses and produced 34 documents on record. On evidence of the prosecution being over, the

statements of both the accused were recorded by the Trial Judge and both of them denied the case in toto, while accused No.2 Sujitsing stated that he was juvenile and, therefore, the Trial Judge sent him to appropriate court. After hearing both the learned counsels, vide above said judgment and order, the present appellant was convicted and sentenced and hence this Appeal.

3 Learned Advocate Mr. P.K.Shukla for the appellant and learned APP Mr. S.P. Hasurker were heard in detail in respect of this Appeal and going through the record and evidence, the learned Advocate for the appellant restricted this appeal only upto the reduction of sentence. It was submitted that the appellant was aged about 37 years at the time, conviction was recorded against him and it was also submitted that the substance which was found from the appellant is less than commercial quantity i.e. of 885 grams, the appellant is younger in age and by reducing sentence an opportunity be afforded to the appellant to reform himself. It is also stated that right from the date of arrest, the appellant has been in custody till today. It is also submitted that there is no criminal history of the appellant and this is the first offence. It is, therefore, submitted that while

maintaining conviction, the sentence awarded to the appellant be reduced to some extent, which would serve the ends of justice. Learned APP Mr. Hasurker was heard in this respect.

4 Having heard learned counsels and having gone through the record of the case when the appeal is restricted to reduction of quantum of sentence only, and not agitated on merits, the principle of criminal law with reference to the facts and circumstances of the case are required to be taken into consideration. The object of punishment is deterrent, reformative and retributive. Punishment serves a purpose inasmuch as it acts deterrent for those who have propensity to commit such offence. While inflicting punishment, two objectives i.e. (i) punishing the criminal not to repeat the same, and (ii) attempt to reform him to be a respectable members of the society must be taken into consideration. With reference to the facts and circumstances of this case, it is undoubtedly clear that no criminal history is brought on record of the appellant. It also appears that this is the first offence of the appellant. Exh. 82 conviction slip placed on record of the Trial Court establishes that right from 20th of August,1999 the

appellant is in custody. The learned Trial Judge has directed that the period which the appellant was under custody during trial be given to him in set off under Section 428 of the Criminal Procedure Code. The judgment of conviction and sentencing the appellant was delivered on 19th of February, 2003. The appellant, therefore was not released on bail during trial as well. Having regard to the fact that the appellant is in his early 40's, reducing the sentence to extent of sufficiency of deterrent effect of punishment would serve the interest of justice. Likewise, the present being the first offence of the appellant, and as above said, having regard to his age, the interest of justice also calls for to afford an opportunity to the appellant to reform himself. Balancing these two aspects i.e. deterrent as well as reformative objective of punishment, the request made by learned Advocate for the appellant is required to be granted that while maintaining the conviction awarded to the appellant, the quantum of punishment be so balanced so as to achieve reformative as well as deterrent objectives.

5 In view of above discussion, while in punishing Section, maximum punishment to the extent of 10 years

rigorous imprisonment and fine to the extent of Rs. 1 lakh is provided, in the facts and circumstances as narrated above, the ends of justices would be met if substantive sentence awarded to the appellant of 7 years be reduced to five years which is half of the maximum punishment provided for and prescribed law. By reducing the substantive sentence from 7 years to 5 years, deterrent effect of the punishment would be maintained as well as little early release of the appellant from jail may encourage him to reform him. In the result, the following final order is passed.

" The Appeal is partly allowed. While maintaining conviction awarded to the appellant for the charge under Section 20(b)(ii)(B) of the Narcotic Drugs & Psychotropic Substances Act, 1985, the quantum of sentence is modified to the extent that instead of 7 years rigorous imprisonment awarded by the Trial Court, the same is reduced and the appellant is directed to undergo 5 years rigorous imprisonment as substantive sentence and to that extent only the interference in the judgment and order is made in this Appeal. Rest of the judgment and order impugned in this Appeal is not interfered with including directing the appellant to pay

fine of Rs. 50,000/- and in default to undergo imprisonment of one year.”

(J.R.VORA, J.)

pnnair